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PAUL SHERRY  
P.L. # 2

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-187900**

**DATE: December 28, 1976**

**MATTER OF: Hillview Farms Fertilizers, Inc.**

**DIGEST:**

Allegation that awardee will not perform contract in accordance with applicable environmental regulations is not for consideration since matter relates to contract administration which is responsibility of procurement activity. Also, insofar as protest takes issue with agency's disposal plan it is untimely raised. Moreover, this Office no longer reviews protests against affirmative determinations of responsibility.

Hillview Farms Fertilizers, Inc. (Hillview) has protested the award of a contract to Northern Illinois Excavating Company (Northern) under request for proposals (RFP) No. N62472-76-R-6166, issued by the Naval Facilities Engineering Command, Great Lakes Branch, Northern Division, Great Lakes, Illinois (Navy).

The solicitation initially called for the contractor to pump approximately 2,000,000 gallons of sewage sludge from a military installation and haul it to a municipal treatment plant for disposal by the municipality. Amendment No. 0001 to the RFP, issued August 4, 1976, changed the scope of work in that the task of disposing of the sludge was shifted to the contractor who was to deposit it upon "a disposal site acceptable to the Illinois EPA [Environmental Protection Agency]." The solicitation also required the contractor to "maintain environmental protection during the life of the contract" and to "comply with all Federal, State and local regulations pertaining to water, air, solid waste and noise pollution." Several offers were received by the Navy by the extended closing date of October 26, 1976, following which a determination was made that Northern was entitled to award of the subject contract. Award was made to Northern on November 24, 1976.

In its letter of protest received at our Office on November 26, 1976, Hillview takes issue with the manner in which the Navy plans to dispose of the sludge. Specifically, Hillview contends that the placement of this sludge on frozen ground is dangerous to the environment and will cause runoff and water pollution. Additionally, the protester asserts that Northern will be unable to dispose of the

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sludge in accordance with Amendment No. 0001 or in a manner acceptable to the Environmental Protection Agency (EPA) and the local county health department.

We note first that Hillview's protest, insofar as it takes issue with the plan of the Navy for disposing the sludge, is untimely raised. Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1976), provides in part that alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein, must be protested not later than the next closing date for receipt of proposals. In the instant case, Amendment No. 0001, in addition to advising offerors that the subject contract was to be performed prior to December 31, 1976, also indicated the changed manner in which the sludge was to be disposed. However, no protest was received from Hillview prior to the October 26, 1976 closing date for receipt of proposals. Accordingly, insofar as Hillview's protest takes issue with the plan of the Navy for disposing of the sewage sludge it is untimely raised.

As regards the issue of whether Northern is able to comply with Amendment No. 0001 and applicable environmental regulations it is to be pointed out first that this Office no longer reviews bid protests involving agencies' affirmative determinations of responsibility, except for actions by procurement officials which are tantamount to fraud or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. Neither exception is applicable here. Moreover, when a bidder submits its bid without exception to the specification, it assumes, upon award, the obligation to perform in accordance therewith. Ralph B. Black, Co., Inc.; The Gardner-Zemke Co., Inc., B-179831, February 4, 1974, 74-1 CPD 50. In any event, the question of whether Northern will comply with the requirements of the RFP pertaining to environmental standards is a matter of contract administration which is the responsibility of the procurement activity. Hamilton Watch Company, Incorporated, B-179939, June 6, 1974, 74-1 CPD 306. Matters of contract administration are not for resolution under our bid protest procedures which are reserved for considering whether award or proposed award of a contract complies with statutes or other legal requirements.

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The protest is dismissed.

*Milton Fowler*  
for Paul G. Dembling  
General Counsel